IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3764 OF 1989

Union Bank of India Plaintiff
versus
Raina Enterprises Defendant

Mr.Subodh Joshi i/by Lokhandwala & Co. for plaintiff.

CORAM : A.M.KHANWILKAR, J.
DATE : 17th September 2007

PC :-

1. None appears for the defendants though served. No written statement has been filed by the defendants. The matter is shown under caption "undefended suit".

2. In substance the case of the plaintiff is that the bill discounting facility was extended to the defendant firm which is a sole proprietary concern of Rajendrakumar K. Bajaj. Pursuant to the said facility the defendant availed of letter of credit facility to the extent of Rs.5.00 lakh from time to time and at the foot of the account at the time of filing of the suit the outstanding amount is stated to be Rs.3,95,362/-. According to the plaintiffs, the plaintiffs are entitled to

interest on the outstanding amount as per agreed rate of interest of 16.5% plus 6.50%. In other words, the plaintiffs are entitled to 23% interest per annum as interest component on the principal sum. The plaintiff’s case is that in spite of legal notice calling upon the defendants to pay the amount the defendants failed to honour the notice. As a result, present suit has been filed where the plaintiffs pray for following reliefs :-

(a) that the defendants be ordered and decreed to pay to the plaintiffs the sum of Rs.95,362/- as per particulars of claim annexed hereto and marked Exh.F hereto together with interest at the rate of 20% p.a. from the date of the suit till payment or realisation;

(b) that the defendants be ordered and decreed to pay to the plaintiffs the sum of Rs.5,76,179/- as per particulars of claim annexed hereto and marked Ex.G hereto together with interest at the rate of 20% p.a. from the date of the suit till payment or realisation;

(c) that it may be declared that the property described in Ex.C hereto is validly mortgaged to the plaintiffs by way of equitable mortgage for the due repayment of the amounts mentioned in prayers (a) and (b) above;

(d) that period fixed for redemption of the mortgaged property by this Hon’ble Court for payment of the amount decreed under prayer (a) and (b) above including further interest and costs of the suit;

(e) that in the event of the defendants committing default in payment of the amount, interest and costs as mentioned in prayers (a) and (b) hereinabove on or before the date of

redemption to be fixed by this Hon'ble Court, the Court Receiver or Commissioner for taking Accounts of this Hon'ble Court be directed to sell the property more particularly described in Ex.C hereto by public auction or private treaty by and under the order and direction of this Hon'ble Court and to apply the net sale proceeds thereof in or towards the satisfaction of the plaintiffs' claim in the suit;

(f) that in the event of the net sale proceeds of the said property above being in sufficient to satisfy in full the plaintiff's claim in the suit, liberty be reserved to the plaintiffs to apply for a personal decree against the defendants;

(g) that liberty be granted to the plaintiffs to bid at the auction sale of the immovable property mentioned in prayer (e) above and in the event of the plaintiffs being declared the purchaser at such auction sale, further liberty be reserved to the plaintiffs to set off the net purchase price as the case may be against the decretal amount;

(h) that pending the hearing and final disposal of the suit, the Court Receiver or some other fit and proper person be appointed Receiver of the property more particularly described in Ex.C to the plaint with all powers under order XL Rule 1 of the Procedure including the Power of Sale;

(i) that pending the hearing and final disposal of the suit, the defendants by themselves, their servants and agents be restrained by an order and injunction of this Hon'ble Court from selling, disposing of dealing with mortgaging or encumbering or parting with possession or creating any third party rights in the property more particularly described in Ex.C to the plaint herein;

(j) for ad-interim reliefs in terms of prayers (h) and (i) above;

(k) for cost of the suit; and

(l) for such further and other reliefs as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

3. As mentioned earlier, none appears for the defendants nor written statement has been filed. The plaintiffs have filed affidavit of Nareshkumar S. Pulapakar, constituted attorney of plaintiff bank sworn on 12th September 2007 reiterating the case made out in the plaint. That affidavit has been filed in lieu of examination-in-chief of the plaintiffs witness. Besides, the plaintiffs have filed original documents such as demand note, writing on the stamp paper given under the signature of defendants firm, letter dated 11th August 1988 addressed to the Manager of plaintiff bank, letter dated 26th May 1988 sent by the plaintiff bank to Maxwell Chemical company, original copies of the bills which were discounted including the legal notice and the acknowledgement indicating that legal notice was duly served on the defendants. The plaintiffs have also produced statement of account as per the record maintained by the bank in its usual course of business which indicates that the defendant was liable to pay a sum of Rs.3,95,362/- as principal amount and interest accrued thereon @ 20% p.a. from time to time. The plaintiff’s advocate, however, in all fairness accepts that the relief in terms of prayer clause (c) cannot be granted in favour of

the plaintiff having regard to the terms of documents described in Exhibit-B.

4. From the evidence produced on behalf of plaintiffs in the form of affidavit in lieu of examination in chief of the plaintiff's witness as well as documents, would substantiate the case made out by the plaintiffs in the plaint that the defendant is liable to pay a sum of Rs.3,95,392/- to the plaintiffs being the principal amount. Besides, from the documents on record it is obvious that the parties had agreed that the rate of interest payable on the outstanding amount would be up to 23% p.a; nevertheless the plaintiffs have restricted their claim for interest up to 20% p.a. from the date of suit, as can be seen from prayer clauses (a) and (b). Taking over all view of the matter, I have no hesitation in accepting the plaintiff's case and to pass decree in terms of prayer clauses (a) and (b) in exercise of powers under Order VIII, Rule 10 of CPC..

5. Accordingly, it is ordered that the suit is decreed against defendants in terms of prayer clauses (a) and (b) with costs. Decree be drawn up accordingly in the above terms.

(A.M.KHANWILKAR, J.)